



STATE OF TENNESSEE
CENTRAL PROCUREMENT OFFICE

**Written Questions & Comments FOR STREAM
COMPENSATORY MITIGATION CREDITS INVITATION
TO BID**

EVENT 0000011977

1. State responses to questions and comments in the table below.

Written Questions & Comments Deadline: August 18, 2021.

QUESTION / COMMENT	STATE RESPONSE
1. Please clarify the use of secondary service areas to satisfy needs in the identified HUCs for long-term needs. Are the secondary service areas based on what is (or is contemplated to be) approved in the banking instrument, or are the secondary service areas defined by TDOT? For example, if an approved bank covers the Watts Bar Lake HUC as a secondary service area (or is expected to once approved), can that bank satisfy the credit needs identified for that HUC in this RFP? In the case of a pending mitigation bank, what would happen if the Watts Bar Lake is ultimately not approved as a secondary service area for that bank?	<p>Paragraph 1.g. of the Specifications defines the Secondary Service Area as: the geographic area (e.g., watershed, county) wherein a Mitigation Bank is authorized to provide compensation for impacts to aquatic resources but is outside the Primary Service Area. The Secondary Service Area is designated in the MBI; in Tennessee, the Secondary Service Area is often a HUC 8 watershed, or group of HUC 8 watersheds, adjoining the Primary Service Area.</p> <p>In order for a bank proposal to be considered responsive to this ITB, the proposal must serve the secondary service areas listed in Table 1 and Table 2 of the Specifications. TDOT does not define secondary service areas for banks. The service areas listed in the Specifications were selected based on 1) TDOT's projected credit needs in those areas, and 2) HUC8s that are likely to be approved by the IRT in the MBI. In the example provided, the bank would not be considered responsive to this ITB because the bank does not include Watts Bar as a primary service area. This is discussed further in Paragraph A.9. of the Specifications.</p>
2. Can banks be considered to be responsive to the identified HUCs through proximity factors in addition to secondary service area coverage?	<p>Banks will not be considered responsive to this ITB if a proximity factor will be required to utilize the service areas listed in Table 1 or Table 2.</p>

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<p>3. If an approved mitigation bank has a portion of an identified long-term HUC as a secondary service area (but does not cover the entire HUC as a secondary service area due to eco-region limitations), can this bank be responsive to the RFP request for that HUC?</p>	<p>Yes, if part of the identified HUC8 is one of the identified secondary service areas, the bank will be considered responsive.</p>
<p>4. Can a contractor provide multiple responses for the same HUC? For example if a contractor has an approved mitigation bank that can be responsive to a long-term need, but that bank does not satisfy the entire need amount, can the contractor submit a separate response for that same HUC so long as it would anticipate BI approval prior to 12/31/2024? As another example, if a contractor has bank that can be responsive to HUC both from a primary service area bank and through a secondary service area bank, should the contractor submit separate responses for each bank?</p>	<p>Yes, the contractor may provide multiple responses for the same HUC. A bank will not be considered responsive if the primary service area is not one of the primary service areas listed in Table 1 or Table 2 of the Specifications.</p>
<p>5. Does TDOT require any level of site control (i.e. option contract for real estate interests) in order to submit for long-term identified needs?</p>	<p>No, TDOT does not require any options or any level of site control in order to consider a bank's proposal for long-term needs, so long as the MBI is approved by the date specified in the ITB.</p>
<p>6. Does the contractor need to provide any mapping or technical descriptions of the sites proposed for long-term needs?</p>	<p>No, the contractor does not need to provide mapping or technical descriptions beyond specifying the watershed and estimated or approved service area of the bank. The contractor should only provide the items required in the Event Details.</p>
<p>7. Are contractors permitted to provide long-term credit pricing that varies depending on when purchases occur? For example, credits purchased before 1/1/2025 are priced at \$x, credits purchased 1/1/2025-12/31/2028 are priced at \$y, credits purchased 1/1/2029 and beyond are priced at \$z.</p>	<p>No, the contractor will submit one credit price in their proposal. The terms and conditions only allow for price changes caused by negative effects in the market. Please reference 6.2. Price Changes:</p> <p>b) The request shall: include independently verifiable documentation that supports Contractor's request for a price increase; not constitute an increase in Contractor profit; and reflect a price increase that is applicable to all of Contractor's customers.</p>
<p>8. If a Bank does not have the requested primary service area, but services the requested area as a secondary service area, is it still eligible to submit?</p>	<p>See response to Question #1.</p>
<p>9. Can the right of first refusal be limited to a 30-day response upon the State's receipt of</p>	<p>See response to Question #22</p>

QUESTION / COMMENT	STATE RESPONSE
a confirmed credit release?	
10. What is the basis for a 10 year contract? For banks that already have credits released and available for purchase, can a five year contract be issued? A typical credit release schedule is on a 7-year plan.	The basis for a 10 year contract is to account for time required for bank approval and 7 years of monitoring. The ITB does not authorize 5 year contracts. However, if the terms of the contract can be completed in 5 years, then the contract can be terminated after its completion.
11. Section 3.12 – Can an example contract be provided for review?	The contract is comprised of the specifications and the terms and conditions document attached to this event.
12. Section 3.22 – Since this is a contract for goods and no construction is being contracted why does the winning party need to have a Tennessee Contractor License?	The following provision have been removed to accommodate: 3.22. Tennessee Contractor License
13. Section 4.2 –What is the basis for a warranty period? The Corps of Engineer controls any release of credits so in essence they are certifying these credits are good so a warranty to TDOT should not be required.	Section 4.2. Warranty Clauses has been removed from the terms and conditions.
14. Section 4.3 – The Corps and IRT provide inspection and acceptance of site conditions that generate credits. The contract is to purchase the credits already inspected and accepted by the Corps and IRT. Typical credit purchases do not involve inspection of the mitigation bank site. Why should the State have rights to independently inspect the site?	This is required standard language for state contracts to purchase goods. TDOT will inspect credit release letters, banking instruments, etc. This language does not give TDOT the ability to inspect the site.
15. Section 6.2 – Why should prices be adjusted to reflect a decrease in contractor's costs after the Firm Price Period?	Section 6.2 is not requiring contractors to decrease costs after the Firm Price Period. This provision is outlining the only exceptions where price changes would be allowable.
16. Section 7.1 – In the event that credit currency changes due to a regulatory mandate during the contract period, contracts should be reopened for negotiation based on new credit currency and should not be limited on replacement value.	Contracts cannot be reopened for negotiation. Should credit currency change due to regulatory mandates during the contract period, the State may choose to terminate the contract per Paragraph 7.8 of the Terms and Conditions. If credit currencies change and the State terminates any contracts, the State may or may not choose to solicit another ITB based on the State's credit needs.

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17. Section 7.20 and 7.21 – Why is a Limitation of Liability needed when there are no services being provided?	Limitation of Liability Section 7.20 and 7.21 are required clauses for all state contracts for the purchase of both goods and services.
18. Insurance requirements and Workers Compensation is not needed for a contract to purchase goods.	Section 7.35.2 Workers' Compensation and Employer Liability Insurance and 7.35.3 Commercial General Liability Insurance have been removed.
19. Section 8.5 – What is the basis for FFATA requirements to purchase goods?	Section 8.5 Federal Funding Accountability and Transparency Act (FFATA) has been removed.
20. Why is it required to submit monthly diversity statements in order for the State to purchase goods?	This is only needed if a respondent has answered yes to being a qualified diversity business enterprise on the Respondent's Diversity Utilization Plan found on page 9 of the Terms and Conditions. By reporting diversity spend to the State it will help TDOT to meet their diversity goals.
21. There is a lot of information in this contract and scope that is specific to a services or construction contract that does not need to be in a contract for purchasing a good or a product.	<p>The following provisions have been removed to accommodate:</p> <p>3.22. Tennessee Contractor License</p> <p>4.2. Warranty Clauses</p> <p>7.10. Assignment and Subcontracting</p> <p>7.35.2. Workers' Compensation and Employer Liability Insurance</p> <p>7.35.3. Commercial General Liability Insurance</p> <p>8.5. Federal Funding Accountability and Transparency Act (FFATA)</p>
<p>22. Section 7 of the bid documents Specifications reads "If the State determines that any Released Credits do not meet the State's mitigation needs, then, subject to the State's first right of refusal, the Contractor may sell such identified Released Credits to third parties." We respectfully request clarification of the intent of this paragraph.</p> <p>Our Banking Instrument has 5 trigger points to release credits to the Bank after which they can be sold. Those points start with the approval of the banking instrument and end with the final release following proof the bank has met its performance standards through year seven post construction. We would like to propose adding a 30 day time limit for the state to respond after receipt of the official notification of credit availability by the Bank and the elimination of the</p>	<p>TDOT will notify the contractor of our intention to purchase the credits within 30 days of receipt of a signed credit release letter from the Corps of Engineers. The Specifications Section #7 has been revised to reflect this update.</p>

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<p>“first right of refusal”. Knowing 30 days is a tight window to determine TDOT’s needs accurately, we would offer to give the state a minimum of a 90 day heads up on scheduled credit release. The 120 day total notice should allow ample time for well thought out decision by TDOT, and potentially shorten the time we have dollars invested without the opportunity to pass our product along to the state by as much as 720 days.</p>	
<p>23. Can TDOT please explain/ define the use of the Line Details “Best” and “Worst” fields? For example, if a submitter will include more than one bank in a watershed and prices are different in each bank, should submitters use the lowest priced bank credits in the “Best” field and the higher priced bank credits in the “Worst” field?</p>	<p>These two fields are found within the Event PDF file created automatically by the State’s procurement system. “Best” and “Worst” fields are for internal weighting purposes and do not require a response from the respondent.</p>
<p>24. The RFP requests that the sponsor list any subcontractors used to deliver the services. If subcontractors were used for certain elements of mitigation bank development (i.e. construction, design, monitoring), but have no ownership interest in the bank and are not co-sponsors of the bank, should they be listed in the RFP response?</p>	<p>Section 7.10. Assignment and Subcontracting has been removed from the terms and conditions.</p>
<p>25. In the Event Details, the respondent is requested to list its subcontractors; however, the Invitation to Bid (ITB) is for the purchase of mitigation credits and not services. Are firms hired by the respondent to develop its private mitigation bank considered “subcontractors” under this ITB?</p>	<p>Section 7.10. Assignment and Subcontracting has been removed from the terms and conditions.</p>
<p>26. In the Specifications document, Section A.3 states that the Contractor will “sell credits to the State once they have been released by the U.S. Army Corps of Engineers (USACE) and the Tennessee Department of Environment and Conservation (TDEC).” Will TDOT confirm that the State intends to purchase credits from the Contractor once credits have been released? If so, can TDOT indicate the maximum amount of time allowable under the Contract before the State must provide payment to the Contractor after credits have been released? Further, can TDOT please explain the State’s procedure for purchasing credits if more than one credit release is required to fulfill the total credit amount in the Contract?</p>	<p>TDOT will only purchase credits that have been released. Payment typically occurs within 90 days of receipt of approvable invoice. If the total contracted amount is not available in one release, TDOT would purchase the released credits and subsequent releases until the contracted amount was purchased, as long as the credits fit the State’s needs.</p>

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27. The Specifications document discusses both “long-term credits” and short-term credits”. Could TDOT confirm that all credit target amounts specified in Table 1 are for long-term credits, and all credit target amounts in Table 2 are for short-term credits?	Yes, that is correct.
28. The Specifications document states, “The Contractor’s Mitigation Bank shall have a Mitigation Banking Instrument (MBI) for the proposed mitigation site approved by the Inter-agency Review Team (IRT). Such approval must be signed and dated by the IRT member agencies on or before June 30, 2022.” Can TDOT please confirm that credits from the approved bank do not have to be released by June 30, 2022?	No, credits do not have to be released by June 30, 2022. This deadline is only for MBI approval and may be extended per Paragraph 4.3 of the Specifications.
29. In the Specifications document, Section A.6 states, “The State will only pay for the number of Released Credits that meet the State’s mitigation needs.” Could TDOT confirm that the number of credits indicated in the “Bid Qty” field for each primary service area is equal to the State’s mitigation needs? If this is not correct, what do these credit amounts indicate?	The number of credits listed in the Bid Qty field is an approximation of the State’s mitigation needs.
30. Will the State be obligated to purchase all credits specified in the Contract with the awarded Contractor at the price specified in the Contract?	The State intends to purchase the credits at the price specified in the Contract. The State reserves the right to make no purchase pursuant to Paragraph 6 of the Specifications.
31. Table 2 lists two hydrologic unit code (HUC) watersheds under the “Primary Service Area” column. This suggests that impacts occurring within one of the HUC watersheds could be compensated by purchasing credits in the other watershed even if mitigation credits are available from an approved bank in the same HUC watershed as the impact. This interpretation of Table 2 doesn’t appear to be consistent with current USACE and TDEC policies. Could TDOT please clarify why two HUC watersheds are listed under the “Primary Service Area” column so the respondent understands how its credits may be used to mitigate for impacts in and outside of its bank’s (or pending bank’s) primary service area?	Two HUC8 watersheds are listed because TDOT will accept proposals from banks located in either of those watersheds. Proposals from either watershed would be considered equally.
32. In the TB, Section 5.1 of Term of Contract states, “The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date.” Section 6.1 of Payment Terms and Conditions states, “The State does not guarantee that it will buy any minimum quantity of	The number of credits listed in the Bid Qty field is an approximation of the State’s mitigation needs.

QUESTION / COMMENT	STATE RESPONSE
goods or services under this Contract.” Based on these statements, is it accurate to state that the Contractor would be obligated to credit pricing specified in the Contract without any obligation or guarantee from the State to purchase the contracted number of credits?	
33. In the ITB, do warranty clauses and inspection and acceptance sections apply to this bid? If they do apply, then what happens if the State decides the contracted credits do not meet its mitigation requirements?	Section 4.2. Warranty Clauses has been removed from the terms and conditions.
34. In the ITB, Section 3.22 states, “Respondents shall be properly licensed as of the date it files a response to this ITB and shall provide evidence of compliance with all applicable provisions of the Contractors Licensing Act of 1994, Tenn. Code Ann. § 62- 6-101, et seq. in providing the specified information within this ITB. Any response that does not comply with Tenn. Code Ann. § 62-6-119, when applicable, shall be rejected.” Can TDOT please clarify if this requirement is applicable for this ITB?	Section 3.22. Tennessee Contractor License has been removed from the terms and conditions.
35. In the ITB, Section 3.27 states, “Respondent must be registered with the Tennessee Department of Revenue for the collection of Tennessee sales and use tax. The State shall not award a contract unless the respondent provides proof of such registration or provides documentation from the Department of Revenue that the Contractor is exempt from this registration requirement.” Does the Respondent need to be registered at the time the Respondent submits its response to the ITB, or just prior to entering into a contract with the State?	The Respondent must be registered prior to entering into a contract with the State.
36. Christmas Creek Revival, LLC (CCR) is the Bank Sponsor for a proposed Christmas Creek Mitigation Bank (CCMB) in the Stones River Watershed. CCR is a majority (55%) woman-owned company (WBE), however, we have just initiated the application registration process and may not officially receive our DBE status for another few months. Is this worth noting in our bid submittal or should we leave this information out? Furthermore, all of our planned sub-contractors (engineering firms, construction firms, etc.) will be small business enterprises (SBEs) although some of this work is forthcoming since the Bank is currently being permitted.	Please fill out the Respondent's Diversity Utilization Plan found on page 9 of the Terms and Conditions under the Diversity Business Information section and submit along with your bid to be evaluated.

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<p>37. On Page 5, Terms and Conditions document, Section 3.22, Tennessee Contractor License, it states “respondents shall be properly licensed as of the date that it files a response.... in accordance with Contractors Licensing Act of 1994, Tenn. Code Ann. § 62-6-101, et seq. in providing the specified information”. Is this referring to being properly setup with the State’s Edison system as a vendor? The CCR company consists of individuals that have State licenses (i.e., PE license) in-house as well as through the current sub-contractors used to do our permitting and engineering work for our proposed Bank. We will also be subcontracting the construction work to a licensed TN contractor. Do these subcontractors’ professional licenses suffice for CCR, LLC to prime this contract?</p>	<p>Section 3.22. Tennessee Contractor License has been removed from the terms and conditions.</p>
<p>38. On Page 5, Terms and Conditions document, price change provisions are described. Does this apply to the contract regarding credit prices? After the “Firm Price Period” ends, is TDOT expecting the credit price to be adjusted per the Contractor’s decrease/increase in costs?</p>	<p>No, the contractor will submit one credit price in their proposal. The terms and conditions only allow for price changes caused by negative effects in the market. Please reference 6.2. Price Changes:</p> <p>b) The request shall: include independently verifiable documentation that supports Contractor's request for a price increase; not constitute an increase in Contractor profit; and reflect a price increase that is applicable to all of Contractor's customers.</p>
<p>39. On Page 12, Terms and Conditions document, invoice terms are described. When an invoice has been properly submitted, how long does it take TDOT to complete the payment transaction? Furthermore, it is assumed that TDOT has the rights of refusal on purchasing credits that have been released. How long does TDOT have to make the decision to purchase or refuse available credits?</p>	<p>Please refer to responses to numbers 22 and 26.</p>
<p>40. On Page 21 of the Terms and Conditions document, Sections 7.351 and 7.35.2, Insurance Requirements and Workers Comp, it states that that the Contractor shall provide the State with a COI and Employer Liability Insurance. Does this apply to this particular contract where the Bank Sponsor will be selling credits to TDOT after approved from the Corps of Engineers? I think we are exempt from Workers Comp and Employer Liability Insurance since CCR only has two owners (fewer than 5 employees), but not sure about the COI? Both our engineering sub-contractor (i.e., Wilbanks Engineering & Environmental Services, LLC) and our proposed stream construction contractor provide COI and</p>	<p>Please refer to the State’s response to question #21.</p>

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<p>Liability Insurance. Furthermore, our proposed contractor is bonded and our proposed BANK will require a performance bond. Are these sufficient or can you provide some clarity to the COI requirements?</p>	
<p>41. Stones River Watershed: How many stream credits does TDOT need (and willing to commit to) by June 2022? CCR (Bank Sponsor) estimates approximately 1,500 stream credits will be available for purchase at our new proposed Christmas Creek Mitigation Bank (CCMB) by this time. However, we will likely have another 4,500 stream credits released by June 2023. TDOT lists a need for 6,000 credits in this watershed as a “short-term” need. Will TDOT’s need for credits in the Stones carry beyond June of 2022.</p>	<p>Yes, TDOT’s need for credits would carry beyond June 2022.</p>
<p>42. Stones River Watershed: The Bid documents state that TDOT estimates paying \$1,600 per stream credit for each of the 8-Digit HUC watersheds / service areas. Does this reflect an average sale price across all the listed watersheds? We are curious why TDOT provided this “estimated” credit price in their ITB, if this is a competitive bid contract? Can it be assumed that TDOT was just providing general guidance and expectations for where they expect contractors’ stream credit prices to fall within?</p>	<p>This is general guidance. This is still a competitive bid selection.</p>
<p>43. Stones River Watershed: The Bid “name” and “description” seems to imply that TDOT is interested in establishing a contract(s) to also purchase wetland credits as well. However, the bid documents (i.e., Mitigation_Credits_Specifications and DOT_Wetland_Compensatory_Mitigation_Credits pdfs) did not appear to specify an amount. Does TDOT also wish to purchase wetland credits in the Stones River Watershed? And if so, is there an approximate number of wetland credits TDOT can provide (similar to what was provided for stream credits)? If so, the bid documents establish an “estimated” price per stream credit but fails to mention an “estimated” price for wetland credits.</p>	<p>The Event title “Wetland_Compensatory_Mitigation_Credits” was a mistake that was overlooked on the behalf of the solicitation coordinator, at the time both stream and wetland were requested within the specifications and later wetland credits were removed. The State is only seeking stream credits.</p>
<p>44. Stones River Watershed: Does a Bank in the Stones River watershed take precedent over a Bank in the Harpeth for the short-term needs in this area where both these watersheds are dual-listed?</p>	<p>Please see response to Question #31.</p>
<p>45. Lower Duck Watershed: Similar to the Stones, how many stream credits can TDOT commit to before June 2022?</p>	<p>The State will purchase credits that fit the State’s credit needs. Please also see response to Question #41.</p>

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46. Lower Duck Watershed: Does TDOT need to purchase wetland credits in this watershed? And if so, approximately how many?	Please reference response to question #43.
47. Could TDOT provide a pro forma contract that TDOT intends to have the Contractor sign upon award of the bid?	No, this solicitation is an Invitation to Bid meaning the contract is derived of two documents: specifications and the terms and conditions currently attached to this event. Pro forma contracts are awarded only through Request For Proposal (RFP) solicitations.
48. Following the Contractor's notification to TDOT that Released Credits are available in a quantity up to or less than the bid quantity, will TDOT then be required to contract for all available Released Credits in the Bank with a single purchase? We assume that TDOT's first right of refusal would be for the full amount of the complete Credit Release if that total is less than the bid quantity and if TDOT chooses to enter into an agreement with the Contractor to purchase those credits.	If the total contracted amount is not available in one release, TDOT would purchase the released credits and subsequent releases until the contracted amount was purchased, as long as the credits fit the State's needs. The State reserves the right to make no purchase or to make partial, single, or multiple purchases as is determined to be most advantageous to the State.
49. Within a service area in which TDOT has already contracted to buy credits via this ITB, can TDOT instead satisfy all or a portion of its credit needs stated in this ITB by buying credits from a different Bank that did not respond to this ITB? We suggest stating the answer to this question in the ITB contract.	No, The State will preferentially purchase credits through respondents to this ITB.
50. Following the Contractor's notification to TDOT that Released Credits are available in a quantity up to or less than the bid quantity, what is the maximum length of time that TDOT's first right of refusal would apply to these Released Credits, which would prevent the Contractor from selling such Released Credits to third parties? We suggest a maximum 30-day right-of-refusal period from the Banker's notice of credit release be added to the contract.	Please see response to Question # 22.
51. When TDOT has already purchased or passed on a portion of the bid quantity, would the first right of refusal only apply to the remainder of the bid quantity?	First right of refusal applies to individual credit releases. If the State exercises first right of refusal in one credit release, the State retains first right of refusal in subsequent releases, if the State is contracted for that number of credits.
52. Should a Contractor decide to terminate its mitigation bank during the 10-year contract period, how would the Contractor be released from the contract with TDOT?	The State may terminate a contract for convenience or cause pursuant to Sections 7.8. Termination for Convenience and 7.9. Termination for Cause within the Terms and Conditions. The contractor may request that the State terminate the contract for convenience. Such termination is at the State's sole discretion.

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53. Given that the scope of work includes only the provision of Stream and Wetland Compensatory Mitigation Credits, would TDOT waive the requirement that respondents hold a Tennessee Contractor License?	Section 3.22. Tennessee Contractor License has been removed from the terms and conditions.
54. Will TDOT provide a copy of the proposed contractual form that will be utilized upon award?	This solicitation is an Invitation to Bid meaning the contract is derived of two documents: specifications and the terms and conditions currently attached to this event.
55. Is TDOT requiring any evidence of land control in order for responses to long-term needs (Table 2) to be eligible?	No, TDOT is not requiring evidence of land control for responses to long-term needs to be considered.
56. Given that qualifications are not requested, are respondents required to identify subcontractors at this time? If required, is it ok if we list a suite of subs we might chose to work with?	Section 7.10. Assignment and Subcontracting has been removed from the terms and conditions.